

ASSEMBLY BILL

No. 2905

Introduced by Assembly Member Wright

February 25, 2002

An act to add Sections 7506 and 7507 to the Penal Code, relating to correctional institutions.

LEGISLATIVE COUNSEL'S DIGEST

AB 2905, as introduced, Wright. Correctional institutions: human immunodeficiency virus.

Existing law sets forth certain circumstances under which testing an inmate for human immunodeficiency virus (HIV) may be required, including upon request by certain peace officers or other inmates in specified circumstances.

This bill would, in addition, require HIV testing for all inmates entering a correctional facility for incarceration for a period of at least one year, for persons entering a state prison, a state Youth Authority facility, or a state hospital housing patients committed pursuant to existing provisions of law, as specified. The bill would require testing within 60 days of entry to the facility, and again between 30 and 60 days prior to the expected discharge from the facility.

The bill would provide that its requirements are contingent upon an appropriation by the Legislature in the Budget Act of 2002.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 7506 is added to the Penal Code, to read:
2

1 7506. The Legislature finds and declares the following:

2 (a) The prevalence of human immunodeficiency virus (HIV)
3 infection in state prison facilities has been found by blind blood
4 testing surveys to fall within the range of 2.5 percent to 4 percent
5 of the inmate population, a percentage significantly higher than
6 that found in the general population.

7 (b) HIV testing in correctional facilities, youth authority
8 facilities, and state mental hospitals housing patients committed
9 pursuant to provisions of the Penal Code is currently not universal,
10 and several thousand incarcerated persons may not know that they
11 are infected with the agent believed to be the cause of acquired
12 immune deficiency syndrome.

13 (c) There is a substantial risk of HIV transmission within state
14 and local detention facilities, partly due to unprotected sexual
15 activity that is prohibited, but nevertheless known to occur and
16 cannot be completely prevented.

17 (d) The consistent use of condoms is one of the most effective
18 methods for prevention of HIV transmission, but in state prisons
19 and almost all county correctional facilities, condoms are not
20 available.

21 (e) One of the reasons cited by wardens and sheriffs for not
22 permitting condom availability is that it might be construed as
23 aiding and abetting a felony pertaining to sexual activity while in
24 prison or a local detention facility.

25 (f) The vast majority of persons incarcerated in state
26 institutions and local detention facilities are eventually released to
27 the community, and if infected with HIV, may transmit this virus
28 to unsuspecting spouse, partners, or others.

29 SEC. 2. Section 7507 is added to the Penal Code, to read:

30 7507. (a) The officer in charge of every state prison or state
31 Youth Authority institution, and the medical director of each state
32 hospital housing patients committed pursuant to provisions of this
33 code shall ensure that testing for HIV infection is performed by
34 methods specified in this title, on every person expected to be
35 incarcerated within the respective facility for a period of not less
36 than one year.

37 (b) Testing pursuant to this section shall be performed within
38 60 days of entry to the facility and shall be performed again
39 between 30 and 60 days prior to the expected date of discharge
40 from the facility.

1 (c) The provisions of this title relating to the right to receive
2 counseling, notification of test results, and testing procedures are
3 applicable to persons tested pursuant to this section.

4 (d) Nothing in this section shall be construed to limit the
5 provision for required HIV testing as set forth in Chapter 2
6 (commencing with Section 7510) of this title.

7 (e) The Director of Corrections, and the Directors of the
8 Department of the Youth Authority and State Department of
9 Mental Health shall report annually to the State Department of
10 Health Services and to the Legislature on the prevalence of
11 positive HIV tests within their respective institutions, including an
12 aggregate comparison of the results of the entry and exit testing,
13 and the numbers of persons converting from a negative to a
14 positive test, in a format determined by the Department of
15 Corrections, provided that no individually identifying information
16 on persons tested shall be included in those reports, and that
17 individual HIV tests shall be subject to the confidentiality
18 provisions of this title.

19 (f) If within a state detention institution or state hospital subject
20 to this section, there are no persons converting from a negative
21 result on the entry test to a positive test on the exit test, within a
22 two-year period, then the Department of Corrections may exempt
23 that institution from performing entry and exit tests, and instead
24 permit it to perform a single test for HIV infection at any time
25 during the period of incarceration, but in no case later than 30 days
26 prior to the date of expected discharge, provided that upon
27 evidence of HIV infection within the facility, the exemption herein
28 may be withdrawn by the department.

29 (g) The duties imposed by this section are contingent upon an
30 appropriation by the Legislature of sufficient funds to implement
31 this section.